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Recent Developments: Reddick v. State: Sentencing Judge's Offer to Suspend Five Years Imprisonment upon Payment of Restitution to Victim's Family Violated Indigent Defendant's Equal Protection Rights

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lition had standing to pursue a judicial review action under the common law or MESA. The court first examined the circuit court's holding that there could be no judicial review of the permits under section 9-263. *Id.* at 606, 612 A.2d at 246. The trial judge reasoned that the issuance of permits did not qualify as an "order" under section 9-263. *Id.* at 603, 612 A.2d at 244. The court of appeals noted, however, that the refuse disposal permit was issued pursuant to a decision by the Department of the Environment. *Id.* at 607, 612 A.2d at 246. They determined that this decision was synonymous with an "order," and was subject to judicial review under section 9-263 of the Environment Article. *Id.*

The court next turned to the issue of whether the permits were "contested cases," and therefore also subject to judicial review under the APA. The State Government Article, section 10-201(c), Maryland Code Annotated, defines a contested case as "a proceeding . . . that is required by law to be determined only after an opportunity for an agency hearing." *Id.* The court found that the State requires a hearing prior to the approval of a construction permit. *Id.* at 609, 612 A.2d at 247 (citing *Sugarloaf v. Waste Disposal*, 323 Md. 641, 656-57, 594 A.2d 1115, 1122 (1991)). Thus, the court held that the hearings held prior to the issuance of the permits fell within the definition of a contested case under the APA. *Id.*

The court recognized that although the permits themselves were subject to judicial review under both section 9-263 and the APA, the Coalition had to meet standing requirements in order to challenge the issuance of the permits. *Id.* at 611, 612 A.2d at 248. The court stated that in order for an organization to have standing, it must have a "property interest of its own . . . separate and distinct from that of its individual members." *Id.* at 612-13, 612 A.2d at 249 (quoting *Citizens Planning and Housing Ass'n v. County Executive*, 273 Md. 333, 345, 329 A.2d 681, 687-88 (1974)). The Coalition failed to show

that it possessed a separate and distinct property interest. *Id.* at 614, 612 A.2d at 250. In addition, because it brought an action to remedy a "public wrong," the court found that the Coalition failed to show it had suffered "damage from such wrong differing in character and kind from that suffered by the general public." *Id.* at 612-13, 612 A.2d at 249 (citing *Rogers v. Maryland-National Capital Park and Planning Comm'n*, 253 Md. 687, 691, 253 A.2d 713, 715 (1969)). The court of appeals thus held that the Coalition lacked standing under Maryland common law to bring an action for judicial review. *Id.* at 614, 612 A.2d at 250.

The court of appeals next determined whether the Coalition had standing under MESA. *Id.* at 617, 612 A.2d at 252. MESA changed the Maryland common law requirements for standing in certain environmental proceedings. Section 1-503(a)(3) relaxed the standing requirements for an organization regardless of whether or not it had suffered a property damage which was independent of its individual members. In addition, the organization did not need to show that it suffered a harm which differed from that of the general public. *Id.* at 615, 612 A.2d at 250-51.

The court noted that the relaxed standing requirements of MESA applied specifically to actions for "mandamus or equitable relief . . . against any officer or agency of the State . . . for failure . . . to perform a nondiscretionary ministerial duty imposed upon them . . . or for failure to enforce an applicable environmental quality standard." *Id.* at 615-16 (quoting MESA, Md. Nat. Res. Code Ann. § 1-503(b) (1989)). The court also determined that MESA did not grant relief to a party if the aggrieved activity complied with a current, lawful permit "issued by an agency of the United States, [or] the State." *Id.* at 617, 612 A.2d at 251. Because this case involved judicial review of the issuance of two permits which did not fall within the express provisions of MESA, the Coalition was not granted stand-

ing. The court held that MESA did not broaden standing requirements generally, but only relaxed standing requirements for specific provisions. *Id.* at 618, 612 A.2d at 252. The court emphasized that MESA does not "grant organizations . . . standing to participate in judicial review of an administrative decision." *Id.* at 622, 612 A.2d at 254.

Medical Waste Associates is significant because the Court of Appeals of Maryland interpreted MESA strictly. The court reviewed the legislative history of MESA, and held that the intent of the General Assembly was to relax the standing requirements only for specific actions. In all other cases, an organization must invoke standing under either Maryland common law or another statute. This decision may have a serious impact on Maryland environmental issues. If an environmental organization does not meet the APA requirements for standing, and does not fall within the narrow limits of MESA, the group may not bring an action for judicial review of permits issued by the Department of the Environment.

- Bonnie S. Laakso

***Reddick v. State*: SENTENCING JUDGE'S OFFER TO SUSPEND FIVE YEARS IMPRISONMENT UPON PAYMENT OF RESTITUTION TO VICTIM'S FAMILY VIOLATED INDIGENT DEFENDANT'S EQUAL PROTECTION RIGHTS.**

In *Reddick v. State*, 327 Md. 270, 608 A.2d 1246 (1992), the Court of Appeals of Maryland held that a sentencing judge's offer to suspend part of an indigent defendant's sentence upon payment of the victim's medical and funeral expenses was illegal because it violated the defendant's rights to equal protection under the Fourteenth Amendment to the United States Constitution. The court's holding effectively limits the power of judges to encourage payment of restitution when imposing criminal sentences.

A jury in the Circuit Court for Baltimore City convicted Raymond Frances Reddick ("Reddick") and Harvey Lee Southall of second degree murder and the unlawful use of a handgun. Although the sentencing guidelines suggested a twenty-five year sentence, Judge Hammerman imposed a thirty year sentence for the second degree murder conviction and ten years for the handgun violation, to be served concurrently. The Judge believed that the sentence was justified in light of the degree of violence of the crime and the devastating impact the defendants' actions had on the victim's family. In addition, Judge Hammerman was concerned about the financial burden the defendants' actions had placed upon the victim's family. Medical and funeral expenses amounted to \$6,000. In light of this burden, the Judge offered each defendant the opportunity to reduce his sentence to twenty-five years upon payment of \$3,000 individually to the victim's mother by February 2, 1991.

On appeal to the Court of Special Appeals of Maryland, both defendants' convictions were affirmed in an unreported opinion. The Court of Appeals of Maryland granted Reddick's petition for certiorari. Reddick contended that because he is indigent, the offer to reduce his sentence upon making a contribution toward the expenses placed upon the family of the victim was unconstitutional. He asserted that this offer constituted an unlawful distinction among sentences based on a defendant's wealth or poverty, and therefore violated the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution and Article 24 of the Maryland Declaration of Rights. To further illustrate his position, Reddick argued that it was "unconstitutional to incarcerate an indigent defendant for a term longer than that imposed on a similarly situated nonindigent defendant who would be able to make the requisite monetary payment." *Reddick*, 327 Md., at 272, 608 A.2d at 1248. Accordingly,

Reddick requested that the court vacate his entire sentence because of the unconstitutional conditional offer to suspend five years of his sentence if he paid the victim's family \$3,000.

The Court of Appeals of Maryland rejected the State's characterization of the sentence as an unconditional thirty year term containing a provision of certain conduct, compliance with which the defendant would encourage the trial judge to modify the sentence. *Id.* at 273, 608 A.2d at 1248. The court also refused to accept the State's alternative argument that the trial judge should simply strike the illegal language containing the offer and allow the thirty year sentence to stand because permitting suspension of five years of the sentence conditioned upon payment of the victim's medical and funeral expenses was illegal and, thus, null and void. *Id.*

Although the court of appeals agreed with Reddick's assertion that the offer constituted a violation of his rights, the court refused to vacate his entire sentence. *Id.* at 274, 608 A.2d at 1248. Instead, the court simply struck the illegal portion of the sentence and remanded the case to the Circuit Court for Baltimore City with instructions to resentence Reddick to a term of twenty-five years. *Id.* In holding that Judge Hammerman's offer to suspend part of the sentence in return for contribution to the victim's family's expenses was unconstitutional, the court stated that where a court has "determined that a fine or restitution is an appropriate sentence, a court cannot then imprison a defendant solely because of his inability to pay it." *Reddick*, 327 Md. at 273-74, 608 A.2d at 1248 (citing *Bearden v. Georgia*, 461 U.S. 660, 665 (1983)). Applying this principle of equal protection to the present case, the Court of Appeals of Maryland characterized Judge Hammerman's offer as a chance to "buy" a suspended sentence. *Reddick v. State*, 327 Md. at 273, 608 A.2d at 1248. The court concluded that equal protection required that the unconstitutional portion be stricken

from the sentence; otherwise, it would imprison Reddick for a longer term than a similarly situated defendant with the financial capability to make the payment. *Id.* at 274, 608 A.2d at 1248.

The court's holding effectively restricts the ability of the sentencing judge to allow an indigent defendant the opportunity to pay restitution for his victim's expenses in order to reduce the term of incarceration. Where the defendant's actions place heavy financial burdens on a victim or his family, the court has an interest in seeing that the defendant take as much responsibility as possible for those expenses. However, an offer of a reduced sentence in exchange for contribution towards a victim's family's financial burden will run afoul of the Equal Protection Clause of the Fourteenth Amendment where the judge is faced with an indigent defendant. Thus, despite a court's concern over expenses imposed upon a victim's family, the court cannot offer a defendant the opportunity to pay restitution to his victims at the expense of the defendant's constitutional rights.

- Paula L. Davis

***Two Pesos, Inc. v. Taco Cabana, Inc.*:
PROTECTION OF INHERENTLY
DISTINCTIVE TRADE DRESS
UNDER LANHAM ACT DOES
NOT REQUIRE PROOF OF SEC-
ONDARY MEANING.**

In *Two Pesos, Inc. v. Taco Cabana, Inc.*, 112 S. Ct. 2753 (1992), the United States Supreme Court allowed protection of a restaurant's inherently distinctive trade dress under section 43(a) of the Trademark Act of 1946, 15 U.S.C. § 1125(a) (1982) ("Lanham Act"), which provides protection to businesses that are harmed by other businesses using false representation or description in connection with any goods or services. Affirming the decision of the Court of Appeals for the Fifth Circuit, the Supreme Court rejected the assertion that secondary meaning of the trade dress was a requisite element of its protection under the